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Attorneys Divide Giant Wal-Mart Sex Discrimination Case

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Despite being dealt a major blow by the Supreme Court, hundreds of thousands of female Wal-Mart employees will continue to seek compensation for allegations of pay and promotion discrimination based on sex.

On June 20, the High Court ruled that [the nationwide class](#), which consisted of any woman who worked at a Wal-Mart store since Dec. 26, 1998, could not proceed because it failed to point to a companywide policy that had a common effect on all women covered by the case. The class action would have been the largest sex-discrimination lawsuit in history.

"[W]e are in a position where our clients have asked us to move ahead with drawing up class cases that are more narrow in scope and consistent with what the Supreme Court has instructed us to do," says [Joseph Sellers](#), co-lead attorney for the plaintiffs in the case and a partner at [Cohen Milstein Sellers & Toll](#) in New York.

- Plaintiffs will proceed with claims organized by Wal-Mart districts.
- Lawyers plan to file 12 to 15 new cases within the next six months.
- Former employees can still file EEOC charges for a limited time.

Supreme Court Smackdown

Sellers and his team originally filed the mammoth class action in June 2001 with the [U.S. District Court in San Francisco](#). The lead plaintiff in the case was Betty Dukes, a 54-year-old Wal-Mart employee who in 2000 filed a sex discrimination claim against the company. Specifically, she alleged that despite having received six years worth of outstanding performance reviews, the large retailer failed to provide her with the training required to advance to a higher paid position. Dukes' attorneys sought class certification, which would have represented as many as 1.6 million female employees. Both the District Court and [9th Circuit Court of Appeals](#) granted class certification.



Joseph Sellers

"We structured the class in accordance with what we understood to be the legal standard in place at the time the case was filed," Sellers says. "We had every reason to hope that the Supreme Court would uphold it."

When the Supreme Court ruled to break up the class, Sellers and his team decided to try a new tactic, one they believe will withstand the scrutiny of the Supreme Court.

Region by Region

Sellers and his team will proceed with separate discrimination claims grouped according to Wal-Mart store regions. There are currently a total of 41 Wal-Mart regions.

"The decisions that are at issue, those being pay and promotion, were made at the regional level at the company," Sellers says. "We are using Wal-Mart's own decision-making process as the guide for how to frame the classes."

Already, Sellers and his team have begun filing new cases. On Oct. 27, they filed a [discrimination claim in California](#). The next day they filed a [claim in Texas](#). Although the complaints filed in both cases are similar, the details of the allegations are specific to each jurisdiction.

"There is a lot of work involved in responding to our clients' request to pursue these cases, and it involves gathering information that is much more focused in what occurred in each region and what evidence is there attributable to key decision makers in each region," Sellers says.

Sellers' legal team plans on filing as many as 12 to 15 cases within the next three to six months, starting with regions where evidence of discrimination is strongest. Former female Wal-Mart employees interested in joining the class actions must file [Equal Employment Opportunity Commission](#) discrimination charges by May 25, 2012, except for those who worked in Arkansas, Louisiana, Alabama or Mississippi, in which case the deadline is Jan. 27, 2012.

[Keith Ecker](#) co-authors the Lawyers.com blog.

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